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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re RENUALDIE CALIZ

on

Habeas Corpus.

D058015

(Super. Ct. No. BA297577)

Petition for writ of habeas corpus. Stephen A. Marcus, Judge. Petition denied.

I.

INTRODUCTION

Renualdie Caliz filed a petition for a writ of habeas corpus, arguing that the California Department of Corrections and Rehabilitation (the Department) violated his constitutional rights when it imposed an administrative sanction that included the loss of 180 days of good conduct credits. The Department found Caliz guilty of violating California Code of Regulations, title 15, section 3016, subdivision (c)¹ (hereafter section 3016(c)) (distribution of a controlled substance), based on evidence that Caliz was sent a

¹ All subsequent unspecified references are to the California Code of Regulations, title 15.

"legal mail" package that contained marijuana and rolling papers hidden inside a transcript.²

In his petition and supplemental petition for habeas corpus, Caliz contends that there is insufficient evidence to support the Department's finding because there is no evidence that he requested that the package be sent to him, or that he had any knowledge of its contents. We apply the "extremely deferential" standard of review to the Department's disciplinary findings, as discussed in this court's decision in *In re Rothwell* (2008) 164 Cal.App.4th 160, 169 (*Rothwell*), and conclude that there is "some evidence" in the record to support the finding that Caliz solicited the mailing of the marijuana or conspired with others to have the marijuana sent to him. Accordingly, we deny the petition.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On February 21, 2008, at approximately 4:00 p.m., Correctional Officer M. Senkel was delivering legal mail at Calipatria State Prison. Officer Senkel approached Caliz's cell and told Caliz that he had legal mail to deliver to him. Caliz signed a legal mail log, identifying the mail as his. After Caliz signed the log, members of the prison's investigative services unit (ISU) approached Caliz's cell, handcuffed him, and removed him from his cell. Officer Senkel gave the package to ISU staff. The package was

² The relevant regulation defined distribution as including "solicit[ing] of or conspiring with others in arranging for, the introduction of controlled substances into any institution . . . for the purpose of sales or distribution." (§ 3000.)

addressed to "Renanidie³] Caliz, F-47081, Facility A Yard Building 3 Cell 106, Calipatria, Calif. 92233," and bore a return address of "Atty Michael F. Michaels, 420 N. McKinely [*sic*] Ste. 111-154, [C]orona, Calif. 97879."

Approximately an hour later, Correctional Officer R. Moore opened the package in Caliz's presence. The package contained a legal transcript, inside of which were hidden two cell phones, two cell phone adapters, and four plastic bindles. Two of the bindles contained rolling papers, and the other two contained marijuana weighing approximately 10 grams.

Caliz was charged with a "serious rules violation" for violating section 3016(c). In March 2008, prison officials gave Caliz a copy of the incident report pertaining to the violation. The report includes Officer Senkel's description of the incident:

"On Thursday, February 21, 2008, at approximately 1600 hours I approached cell A3-106 and informed Inmate Caliz (F-47081, A3-106L) that I had 'Legal Mail' to deliver to him. I identified Inmate Caliz via his State ID Card and had him sign the 'Calipatria State Prison Legal Mail Log' accepting the Legal Mail as his. At this time ISU Staff entered the Housing Unit and approached cell A3-106 and directed Caliz to approach the cell to be 'cuffed up.' "

On December 15, Caliz executed a declaration in which he denied having "solicit[ed]" any illegal activities while incarcerated at Calipatria. Caliz specifically denied knowing the person whose name appeared on the package as the sender. Caliz also stated the following with respect to his interaction with Officer Senkel:

³ Caliz's first name was misspelled.

"4. On February 21, 2008 C/O Senkel arrived at my then assigned cell door (A3-136) stating he had legal mail for me and handed me the Legal Mail log sheet asking me to sign at the indicated space;

"5. Right before C/O Senkel handed me the legal mail log sheet I asked him if the legal mail he referred to was from the Supreme Court;

"6. C/O Senkel responded to my question in the affirmative as follows: '[Y]es, hurry up I got a lot more mail I need to deliver.'"

"7. On or around 1/8/2008, I sent court pleadings regarding my court case (appeal) to the Supreme [Court] [for] their review, and so I was expecting a response;

"8. From and under the impression it was from the [S]upreme [C]ourt as assured to me by C/O Senkel [*sic*];

"9. To my knowledge, C/O Senkel represents a form of authority whom I had no reason to doubt."

On January 2, 2009, Caliz gave investigating Correctional Officer G. Mejia a written statement in which Caliz stated that there was no "evidence that I ever solicited the sending of the [package] in question nor do I know the person who sent it." Caliz also stated, "C/O Senkel[']s assurance at the time he handed me the [legal mail log sheet] for me to sign further proves my point that I was entrapped into this illegal activity from which [*sic*] I have absolutely no knowledge of." Caliz also provided Officer Mejia with a series of questions to ask potential witnesses, including 15 questions for Officer Senkel. Caliz did not request that Officer Senkel be asked any questions concerning the conversation that Caliz claimed had taken place between Officer Senkel and Caliz on the day of the incident.

The Department held a disciplinary hearing on January 5, 2009, at which Caliz pled not guilty. At the hearing, Caliz stated, " 'I was not aware of the legal mail or the attorney. I was le[d] to believe it was from the Supreme Court.' " Caliz elected not to call any witnesses at the hearing.

At the conclusion of the proceeding, the hearing officer found Caliz guilty of violating section 3016(c). In support of this finding, the hearing officer cited Officer Moore's report in which Moore described the search of the package, and an "incident package" that includes Officer Senkel's description of the incident. The hearing officer also stated, "[T]he confiscated bindles are a common method in the prison setting for inmates to distribute drugs. [The senior hearing official] also notes the weight of the bindles containing the [m]arijuana which was 14.5 grams."⁴ The hearing officer imposed an administrative sanction against Caliz that included the loss of 180 days of good conduct credits, as well as the loss of various visitation rights. Caliz filed two administrative appeals of the hearing officer's decision with the Department. The Department denied both appeals.

After his appeals were denied, Caliz filed a petition for writ of habeas corpus in the trial court in which he claimed that there was insufficient evidence to support the Department's finding that he had violated section 3016(c). The trial court denied the petition, stating, "It is undisputed that the package was addressed to petitioner. The

⁴ The marijuana itself weighed approximately 10 grams. Presumably the weight of the rolling papers and the bindles accounted for the additional 4.5 grams.

court's review of the evidence is limited . . . to whether the decision of the hearing officer is supported by some evidence. The court finds that it is and the petition is DENIED."

Caliz filed a petition for writ of habeas corpus in this court in which he reasserts his claim that there is not sufficient evidence to support the Department's finding. We issued an order to show cause and permitted counsel to file a supplemental petition on Caliz's behalf. In his supplemental brief, Caliz reasserts his argument that, "There is no evidence in the . . . record of petitioner's disciplinary hearing to support a finding that petitioner was selling or unlawfully dispersing any controlled substance." The Department filed a return, and Caliz filed a traverse.

III.

DISCUSSION

A. *Standard of review and governing law*

1. *Applicable regulations*

The Department found Caliz guilty of violating section 3016(c), which provides, "Inmates shall not distribute, as defined in section 3000, any controlled substance." Section 3000, in turn, defines "distribution" in relevant part as "the sale or unlawful dispersing, by an inmate . . . of any controlled substance; *or the solicitation of or conspiring with others in arranging for*, the introduction of controlled substances into any institution . . . for the purpose of sales or distribution." (Italics added.)

2. *Standard of review and relevant case law*

In *Rothwell*, *supra*, 164 Cal.App.4th at pages 165-166, this court outlined the standard of review to be applied by a court in reviewing a disciplinary finding by the Department that results in the forfeiture of a prisoner's good conduct credits:

"[T]o insure that the prisoner is not arbitrarily deprived of good conduct credits, the findings of the prison authorities must be supported by 'some evidence.' [Citation]. This standard, which takes into account the unique circumstances of the prison environment, is intended to be extremely deferential, and recognizes that '[r]evocation of good time credits,' while significant enough to implicate due process rights, 'is not comparable to a criminal conviction.' [Citation.] Ascertaining whether the 'some evidence' standard is satisfied 'does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the' prison authorities. [Citations.]"

The *Rothwell* court considered whether there was "some evidence" to support the Department's finding that a prisoner had possessed a controlled substance in violation of section 3016(a). This court described the facts upon which the Department had found that the prisoner possessed a controlled substance as follows:

"On October 7, 2004, a correctional officer working in the mailroom of the Richard J. Donovan Correctional Facility intercepted an incoming postcard addressed to Rothwell. The postcard was, in fact, two postcards 'carefully glued together.' After separating the postcards, the officer observed a substance secreted between them. Upon further testing, the substance was determined to be 0.14 grams of heroin. The postcard bore a return address of 'Muneca, P.O. Box 1689, Chula Vista, CA 91911.' [¶] . . . Rothwell denied any knowledge of the postcard or its contents, and stated that he did not know anyone named Muneca. No other evidence was presented." (*Rothwell*, *supra*, 164 Cal.App.4th at p. 164.)

In evaluating the reasonable inferences that one could draw from such evidence under the applicable "some evidence" standard of review, the *Rothwell* court stated the following:

"Assessing the evidence in the light most favorable to the prison officials' ruling and drawing all reasonable inferences in support of their conclusions [citations], the record establishes the following: (i) Rothwell asked someone outside the prison (Muneca) to send him heroin concealed on a postcard; (ii) the person complied, preparing and mailing to him a postcard containing 0.14 grams of heroin; and (iii) the postcard was intercepted by a guard working in the prison mailroom." (*Rothwell, supra*, 164 Cal.App.4th at p. 169.)

However, after noting that "California courts have considered, and rejected, the contention that an unsuccessful effort to obtain narcotics supports a finding of possession" (*Rothwell, supra*, 164 Cal.App.4th at p. 170), the *Rothwell* court held that there was no evidence in the record to support the conclusion that Rothwell had *possessed* a controlled substance. The court reasoned, "As even the most deferential interpretation of the facts adduced at the disciplinary hearing would not support a finding that Rothwell *possessed* the heroin that was mailed to him, the disciplinary sanction imposed in this case violates due process." (*Id.* at p. 171.)

The *Rothwell* court "emphasize[d] the narrowness of [its] holding: there was insufficient evidence to sanction Rothwell for the sole violation with which he was charged—*possession* of narcotics." (*Rothwell, supra*, 164 Cal.App.4th at p. 163.) The court acknowledged that "there is 'some evidence' that Rothwell engaged in some form of misconduct" (*id.* at p. 171), but noted that Rothwell was "*not* charged with introducing a

controlled substance into the prison under [section 3016(c)]."⁵ (*Id.* at p. 168, italics added.)

B. *Application*

In *Rothwell*, this court stated that, in applying the extremely deferential "some evidence" standard of review, prison officials could reasonably infer that a prisoner had asked a person to send him drugs, based on evidence that someone mailed drugs to the prison addressed to the prisoner. (*Rothwell, supra*, 164 Cal.App.4th at pp. 164, 169; accord *People v. Superior Court* (1972) 27 Cal.App.3d 404, 416 ["It defies reason to say that the marijuana was shipped at random to a person and address with whom the consignor had no prior relationship"].) We agree with the *Rothwell* court. Evidence that a package that contained hidden drugs was addressed to Caliz constitutes "some evidence" (*Rothwell, supra*, 164 Cal.App.4th at p. 164) that Caliz was involved in arranging for the package to be sent to him. Specifically, based on the fact that a package that contained drugs was mailed to Caliz at the prison, it would be reasonable to infer that Caliz solicited or conspired with others in arranging for the introduction of the drugs into the prison. While it is possible that Caliz was not in fact involved, the Department could reasonably have concluded otherwise.

Unlike inmate Rothwell, Caliz *was* charged with violating section 3016(c).

Evidence that Caliz was involved in having a package that contained drugs sent to him

⁵ The *Rothwell* court observed that "Section 3016(a), the specific provision cited in the violation report, is not directed at the introduction of controlled substances into prison, but prohibits the possession of drugs in the prison setting." (*Rothwell, supra*, 164 Cal.App.4th at p. 168.)

supports the finding that Caliz "solicit[ed] . . . or conspir[ed] with others in arranging for, the introduction of controlled substances into any institution" (§ 3000.)⁶ While such evidence might fall far short of the quantum of evidence that would be necessary to sustain a criminal conviction, it is enough to support an administrative decision to revoke good conduct credits. (See *Rothwell, supra*, 164 Cal.App.4th at p. 166 [" 'relevant question is whether there is *any evidence* in the record that could support the conclusion reached by the' prison authorities [citations]" (italics added)].)

We also reject Caliz's contention that the record lacks some evidence to support the Department's finding because "he was led to believe [that the package] contained legal paperwork relevant to his separate legal issues." The only evidence to this effect is Caliz's own declaration and his statement at the disciplinary hearing. Officer Senkel did not indicate in his report that Caliz had asked him any questions concerning the nature of the package on the day of the incident. Further, Caliz did not call Officer Senkel as a witness at his disciplinary hearing, nor did he request that the investigating officer ask Officer Senkel any questions concerning any conversation that may have taken place between Caliz and Senkel at the time Senkel requested that Caliz sign the legal mail log. Under these circumstances, the hearing officer clearly was not required to accept Caliz's testimony that Officer Senkel told Caliz that the package was from the Supreme Court.

⁶ We also reject Caliz's suggestion in his supplemental petition that the record lacks some evidence that he solicited the marijuana "for the purpose of sales or distribution." (§ 3000.) The hearing officer reasonably found that "bindles are a common method in the prison setting for inmates to distribute drugs," and that the weight of the bindles, 14.5 grams, was consistent with a finding that Caliz solicited the marijuana for purposes of sale or distribution.

We conclude that there is some evidence sufficient to support the Department's finding that Caliz violated section 3016(c).

IV.

DISPOSITION

The petition is denied.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.